Cr Appeal 70/96

(2)

CF0000061241

Division Bench (Criminal)

APPEAL OF PRISONER

No..... Name .....

Father's name .....

Residence ..... Age .....

Sentenced to ..... On .....

Under section ..... by .....

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No..... Name .....

Confined in ..... Jail .....

No..... Dated ..... 199 .....

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ .....

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent

.....

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
5 JAN 1996
Reg. No. 15
Receipt Clerk
High Court, Jabalpur

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

AFR

मामला क्रमांक Cr.A.:70/96

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH: - HON'BLE MR. L.C. BHADOO AND HON'BLE MR.DHIRENDRA MISHRA, JJ.

Criminal Appeal No. 70 of 1996

APPELLANT		Bhajan Korva, S/o Saguna Korva, aged about 25 years. R/o Raghupar, Thana-Dhourpur, Distt. Sarguja (M.P.)
	Vs	
RESPONDENT		State of Madhya Pradesh Through-Thana Incharge, Thana- Dhourpur (Ambikapur) District Sarguja (M.P.)

Present:
Mrs. Usha Chandrakar, counsel for the appellant.
Mr. U.N.S. Deo, Addl. Public Prosecutor for the State/respondent.

O R A L J U D G M E N T
(26th March, 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 7.12.1995 passed by 1st Additional Sessions

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.No...70/96 ~~सन् 200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Judge, Ambikapur, Sarguja (M.P.) in S.T.No. 144/1993 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo six months' R.I.

Case of the prosecution, in brief, is that there was a dispute between deceased Chanakram and accused Bhajan Korva in connection with agriculture land. On the fateful day deceased Chanakram took accused with him to the market of Dhourpur for purchasing millet. Accused returned from the market to his house sooner than deceased Chanakram. When deceased was returning to his house from the market, accused shot an arrow at him, which hit the chest on the rib. On cries being raised by Chanakram, his sons Munna, Shivbalak and his wife Phoolobai reached the spot and saw that arrow was pierced on the chest of deceased Chanakram. On enquiry being made, Chanakram disclosed that Bhajan Korva has shot the arrow. Thereafter, Chanakram succumbed to the injuries. The matter was reported to the Police Station-Dhourpur by son of the deceased Shivbalak, on which offence under Section 302 of the I.P.C. was registered against

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.96...7/96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the accused. The Station House Officer, P.S. Dhourpur, left for the scene of occurrence and after giving notice to the Panchas, prepared inquest (Ex.P/1) on the body of deceased Chanakram. Accused Bhajan while in police custody, gave memorandum (Ex.P/2), pursuant to which the bow was seized under Ex.P/3. Plain and bloodstained soil was taken into possession under Ex.P/4. Site plan (Ex.P/5) was prepared. Body of deceased Chanakram was sent for postmortem examination to Primary Health Center, Dhourpur where Dr. Durgaprasad Shandil conducted postmortem on the body of deceased Chanakram and prepared the postmortem report (Ex.P/6), in which he noticed antimortem stab wound over the left side of abdomen (left lumber region), arrow passing through the lower border of last rib in the size of 4 x 2 c.m. and deep traversed to spleen and large intestine punctured, and large amount of blood clotted inside the abdominal cavity. The doctor opined that cause of death was syncope due to severe hemorrhage.

After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Ambikapur from where

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A. 276 - 70 / 96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

learned Additional Sessions Judge received the same on transfer for trial.

Prosecution in order to establish the charge against the accused examined nine witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard Mrs. Usha Chandrakar, counsel appearing on behalf of the accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Mrs. Usha Chandrakar at the outset has not disputed the homicidal death of Chanakram. Moreover, the evidence of PW-5 Shivbalak, PW-6 Munna, sons of the deceased and PW-7 Phoolobai, wife of the deceased, shows that the deceased made oral dying declaration before them to the effect that accused Bhajan has shot

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.No.70/96 **सन् -200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश .

arrow at him. The above evidence is further corroborated by the medical evidence of PW-4 Dr. Durgaprasad Shandil, who conducted postmortem on the body of deceased Chanakram, prepared postmortem report (Ex.P/6) and opined that death was homicidal in nature. Therefore, in view of above, evidence it is established that death of Chanakram was homicidal in nature.

As far as involvement of the accused in crime in question is concerned, in this case the conviction rests only on the oral dying declaration made by deceased Chanakram before his wife Phoolobai (PW-7) and his sons Shivbalak (PW-5) and Munna (PW-6).

As per settled law in order to convict the accused based on the dying declaration the Court is required to insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind and had an opportunity to observe and identify the assailant. Normally, the court in order to satisfy whether the deceased was in a fit mental

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A.No.75/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral, in writing and any adequate method of communication where by words or by signs or otherwise will suffice provided the indication is positive and definite. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate.

Based on the above principle, we shall proceed to examine the evidence adduced by the prosecution in the present case. As per evidence of PW-5 Shivbalak, son of the deceased, there was dispute between the accused and the deceased in connection with land as accused had encroached upon certain portion of land of the deceased. On the fateful day deceased took the accused with him to the market of Dhourpur for purchasing millet and in the night his father did not return, they were sleeping after taking their meal. In the night his father raised cries "come, come, I have been assaulted by Bhajan Korva", on which his mother woke up and asked Munna, Jagar Sai and

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. No. 76/96 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to him that their father is calling. Thereupon, he along with Munna and Jagar Sai went towards Dourpur road and at a distance of 300 meter therefrom, they found their father lying on the road. An arrow was pierced into his chest, on which he asked his father, then his father disclosed to Munna, Jagar Sai and to him that Bhajan has shot the arrow at him. After some time his father succumbed to the injuries. PW-6 Munna, son of the deceased, has stated that there was some dispute between the accused and the deceased regarding land. In the night, his mother informed him that Bhajan has assaulted his father, on which he along with his elder brother Shivbalak went to see their father. Their mother Phoolobai had arrived at the spot first and they came later. Seeing an arrow pierced into the body of their father, he asked him as to who has shot the arrow, on which his father disclosed that Bhajan has shot the arrow. PW-7 Phoolobai, wife of the deceased, has also stated that hearing the cries of her husband she went near the house of Bhajan and found that an arrow was pierced into the body of her husband and on enquiry he disclosed to her that Bjahan has shot an arrow at him.

Learned counsel for the accused/appellant argued that the evidence of the above witnesses cannot be believed as PW-5 Shivbalak

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....Cr.A.No...76/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in his examination-in-chief has stated that on being asked by his mother, he along with Munna and Jagar Sai, went to see Chanakram and before them Chanakram made oral dying declaration that he has been assaulted by accused Bhajan Korva, whereas in his cross-examination in paragraph 11 he has stated that after the death of his father, Phoolobai and Munna etc. reached there. Moreover, there is contradiction in the evidence of these witnesses regarding their arrival on the spot where Chanakram was lying in an injured condition as according to the statement of PW-6 Munna, their mother Phoolobai arrived at the spot first and thereafter, he along with PW-5 Shivbalak reached there. Therefore, in view of above contradiction, the evidence of these three witnesses before whom the oral dying declaration is said to have been made by deceased Chanakram, do not inspire full confidence of the Court.

In order to appreciate the argument advanced by Mrs. Usha Chandrakar, learned counsel for the accused/appellant, we have perused the First Information Report (Ex.P/8) lodged by PW-5 Shivbalak Korva, son of the deceased, in which he has also mentioned that at about 10.00 p.m. his mother asked him to wake up and said that someone is calling, it appears to be the voice of his father, on

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. No. 7/96 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —१—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which he along with Jagnu Uraon went towards Dhourpur road. When they reached near the house of Bhajan, they heard the sound of writhing and saw that an arrow was pierced into the left side ribs of his father, blood was oozing out. On enquiry being made, his father disclosed that Bhajan has assaulted him. The perusal of the above report shows that there is no mention about Munna and Phoolobai regarding their arrival at the spot before his father Chanakram succumbed to the injuries, therefore, to this extent the dying declaration made by the deceased before his wife PW-7 Phoolobai and son PW-6 Munna, appears to be doubtful but as far as evidence of PW-5 Shivbalak is concerned, there is no reason to disbelieve his evidence because whatever he stated in his evidence, he mentioned the same fact in the First Information Report (Ex.P/8) lodged by him next day morning and in the cross-examination the defence has not been able to elicit any circumstances, which makes the evidence of this witness untrustworthy or unreliable.

Learned counsel for the accused/appellant further argued that except the evidence of PW-5 Shivbalak, son of the deceased, no other independent witness has been examined to establish that after the deceased sustained arrow injury, he was in a position to speak.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक ……C.A. No. 75/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In fact, on this point PW-5 Shivbalak has not been cross-examined by the defence that Chanakram was not in a position to speak after sustaining arrow injury. Moreover, this witness has stated in paragraph 12 of his cross-examination that it is incorrect to say that when he reached the spot, his father was unconscious. Dr. Durgaprasad Shandil (PW-4) who conducted postmortem on the body of Chanakram has also not been cross-examined on this point. It is undisputed that body of deceased Chanakram was found lying near the house of accused Bhajan in the night, therefore, the possibility of hearing the cries of Chanakram by his family members cannot be ruled out.

As far as non-examination of independent witness in support of the prosecution case is concerned, we have scrutinized the evidence of PW-5 Shivbalak at length and the same is sufficient to inspire confidence, therefore, non-examination of any other independent witness is not fatal to the prosecution case.

For the foregoing reasons, we are of the considered opinion that the accused has rightly been convicted by the trial Court for causing death of Chanakram by shooting arrow and we do not find any

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मामला क्रमांक ....Cr.A.No.76/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —11—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

illegality or infirmity in the judgment of the trial Court. However, while maintaining the substantive sentence imposed upon the accused/appellant, the fine amount of Rs. 2,000/- is reduced to Rs.1,000/-, in default of payment of fine the accused/appellant to further undergo S.I. for one month.

In the result, the appeal is partly allowed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge